

REMARKS

Reconsideration of the present application in view of the preceding amendment and following remarks is respectfully requested. Applicant notes that the present amendment accompanies a Petition to Accept Late Priority Claim that complies with 35 U.S.C. § 120 and 37 C.F.R. § 1.78(a). Applicant notes the above amendment to the specification was made without prejudice to the filing of any related divisional, continuation, or continuation-in-part application.

***Rejection under 35 U.S.C. § 103, First Rejection***

Claims 1-7 and 10-15 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Townsend *et al.* (WO 96/40980). Specifically, the Action alleges Townsend *et al.*, teach a composition for detecting viable microorganisms and, at the time of the claimed invention, it would have been obvious for one of skill in the art to use redox dyes in the composition of Townsend *et al.* with a reasonable expectation for successfully detecting microorganisms.

Applicant respectfully traverses this rejection and submits one of skill in the art would readily appreciate the presently claimed invention is non-obvious over the cited reference. Nonetheless, solely to expedite prosecution of the application, and without acquiescing to any rejection, Applicant has amended the application to claim priority to U.S. Patent No. 08/484,593, filed June 7, 1995. (Please see enclosed petition). As such, the priority claim of the application obviates the grounds for rejection. Therefore, Applicant respectfully requests this rejection be reconsidered and withdrawn.

***Rejection under 35 U.S.C. § 103, Second Rejection***

Claims 1-7 and 10-16 stand rejected under 35 U.S.C. § 103(a) as allegedly being

obvious over Townsend *et al.* (WO 96/40980) in view of Stern *et al.* (U.S. Patent No. 5,891,709). Specifically, the Action alleges Townsend *et al.* teach compositions for detecting microorganisms and Stern *et al.* teach compositions for detecting bacteria comprising antibiotics for suppression of other non-target microorganisms. The Action further alleges it would have been obvious for one of skill in the art to combine the compositions of Townsend *et al.* with the antibiotic selection of Stern *et al.* to arrive at the presently claimed invention.

Applicant respectfully traverses this ground for rejection and submits one of skill in the art, upon review of Townsend *et al.* and Stern *et al.*, each alone or in combination, would not render the claims of the present invention obvious. Nonetheless, solely to expedite prosecution of the application, and without acquiescing to any rejection, Applicant submits the specification has been amended to claim priority to U.S. Patent No. 08/484,593, filed June 7, 1995. (Please see enclosed petition). As such, the priority claim of the application obviates the grounds for rejection. Therefore, Applicant respectfully requests this rejection be reconsidered and withdrawn.

The above amendment merely sets forth the priority claim that was not made at the time of filing the above-identified application on August 27, 2001. Applicant amends the application merely to expedite prosecution of the present application by claiming benefit of the earlier-filed application, but without acquiescing to any claim rejections.

Applicant also encloses a copy of the petition for acceptance of late priority claim for unintentional delay under 35 U.S.C. § 120 and 37 C.F.R. § 1.78(a)(3). Applicants further enclose the surcharge set forth in 37 C.F.R. § 1.17(t) and statement of unintentional delay.

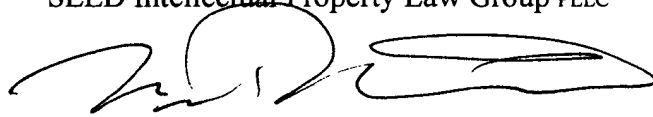
The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

Application No. 09/940,682  
Reply to Office Action dated July 27, 2004

All of the claims remaining in the application are now clearly allowable.  
Favorable consideration and a Notice of Allowance are earnestly solicited.

Respectfully submitted,

SEED Intellectual Property Law Group PLLC



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WTC:jto

Enclosure:

Postcard

Copy of Petition to Accept Late Priority Claim

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